IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WATERLOO DIVISION

United States Department of Education,	)	
Appellant,	)	
	)	No. C01-2027 MJM
vs.	)	
Diane Kristin Meling,	)	**ORDER**
Appellee.	)	

The matter before the court is whether Diane Kristin Meling (hereinafter Debtor) is entitled to an undue hardship discharge of her student loan obligations pursuant to 11 U.S.C. § 523(a)(8). The Bankruptcy Court concluded that Debtor carried the burden of proving undue hardship as required under 11 U.S.C. § 523(a)(8), and discharged her student loans[1]. The United States Department of Education appealed the decision[2]. For the following reasons, the court affirms the

[1]The Honorable Paul J. Kilburg, Chief Judge, United States Bankruptcy Court for the Northern District of Iowa, presiding. This Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. § 158(a)(1).

[2]In addition to the Department of Education, student loans were also discharged as to Waldorf College, University of Northern Iowa, Iowa College Student Aid Corporation and Iowa Student Loan Liquidity Corporation, all defendants in the court below. However, only the Department of Education is appealing the Bankruptcy Court's decision. Defendant Cylinder State Bank was not properly served and thus is

ruling of the Bankruptcy Court.

STANDARD OF REVIEW

The court reviews de novo the bankruptcy court's conclusions of law. Fed. R. Bank. P. 8013; *In re Martin*, 140 F.3d 806, 807 (8th Cir. 1998); *In re Commercial Millwright Serv. Corp.*, 245 B.R. 603, 606 (N.D. Iowa 2000). The bankruptcy court's findings of fact are reviewed for clear error. *In re Usery*, 123 F.3d 1089, 1093 (8th Cir. 1997). "The determination that requiring a debtor to repay student loans would constitute an undue hardship is a factual finding and is reversible only for clear error." *Cline v. Illinois Student Loan Assistance Assoc.* (*In re Cline*), 248 B.R. 347, 351 (B.A.P. 8th Cir. 2000). "'A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed.'" *In re Hatcher*, 218 B.R. 441, 445-46 (B.A.P. 8th Cir. 1998) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)). "'To be clearly erroneous, a decision must strike [the reviewing court] as more than just maybe or probably wrong; it must . . . strike [the court] as wrong with the force of a five-week-old, unrefrigerated dead fish.'" *Ford v. Student Loan Guarantee Found. of Arkansas* (*In re Ford*), 269 B.R. 673, 674 (B.A.P. 8th Cir. 2001) (quoting *In re Papio Keno Club, Inc.*, 262 F.3d 725, 728 (8th Cir. 2001)). The reviewing court may affirm

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not bound by the decision of the Bankruptcy Court.

the bankruptcy court on any evidence supported by the record. *In re Hatcher*, 218 B.R. at 446.

FACTS

The Bankruptcy Court made an extensive finding of fact after a thorough review of the record. Following is a summation of the relevant facts. Debtor is 28 years old, single, with no dependents. She is currently employed as a retail clerk with the Shirt Farm in Spencer, Iowa, working 20-25 hours per week at $6.50 per hour. Debtor has been diagnosed with bipolar disorder. She was hospitalized for several weeks for severe depression in high school and has battled the illness ever since.

Bipolar disorder is a chronic mental health disorder. Individuals are predisposed to having the disorder, that is, it is genetic in nature. Typically, symptoms appear in early adulthood and recur throughout the individual's lifetime. Symptoms include dramatic mood swings ranging from being very depressed to being manic. Erratic, or inappropriate behavior, usually occurs during the manic phase, while the depressed phase is usually accompanied by feelings of low self-worth and reclusive behavior. Individuals suffering from bipolar disorder can be treated with medication, however, such treatment does not always prevent an individual from experiencing the phases of the disorder.

Debtor receives $491.00 per month from Social Security on account of her mental illness. Her gross wages and Social Security benefit total $991.00 per month in income. The prognosis for Debtor to go beyond this level is not encouraging. Debtor has been hospitalized several times for her illness. She takes three medications daily and sees a psychiatrist on a regular basis.

Debtor began her college career in 1991 at Waldorf College with the intention of becoming a teacher. However, during her first semester, the Debtor suffered depression and was once again hospitalized. She received electric shock treatment to stabilize her condition. In the spring semester, the Debtor withdrew from course work due to her prolonged hospitalization. In the fall of 1992, Debtor withdrew entirely from Waldorf College.

After withdrawing from Waldorf College, Debtor took employment in a series of different jobs, all of which ended in her termination. Debtor stated the jobs made her overly tired and that she was unable to meet the demands of the jobs. In the spring of 1993, Debtor enrolled at Iowa Lakes Community College for training in the childcare field. She took only one class.

In the spring of 1994, Debtor enrolled at the University of Northern Iowa. At the same time, Debtor stopped taking her medication. By the end of the fall semester of 1994, Debtor had spiraled into extreme depression and was once again hospitalized. At this point, Debtor had earned nine credit hours with a 1.81 grade

point average. She withdrew from university classes in both the spring 1995 and fall 1996 semesters.

Debtor attempted to pursue her education again at Hawkeye Community College in Waterloo, Iowa. Debtor enrolled and attended school on a part-time basis and also worked on a part-time basis in minimum wage jobs. Again, she found the employment situation too burdensome and was unable to hold a job for more than a few months. However, she did receive an Associate of Arts degree from Hawkeye Community College in the summer of 1998.

Following the completion of her studies at Hawkeye Community College, Debtor again enrolled at the University of Northern Iowa in the fall of 1998. While working part-time in the fall semester, she earned six credit hours. At the same time, Debtor began dating a man who she claims was manipulating her. Debtor contends her boyfriend pressured her into taking out additional loans in her name for his personal expenses and to pay off his obligations. In addition, Debtor alleges he is the reason for the growing credit card debt which she faced and that ultimately forced her to consider bankruptcy.

In the fall of 1999, Debtor ended her relationship with this man, stopped attending classes, and was once again hospitalized. Debtor filed her Chapter 7 petition on November 15, 1999. The Debtor contends her main reason for filing the Chapter 7 petition was to discharge her credit card debt.

In the proceeding below, Debtor's psychiatrist stated that Debtor will not be able to work more than a part-time, low stress job. Further, Debtor will likely have to rely on Social Security benefits for the duration of her life. Debtor must be employed in a flexible environment by an employer who is understanding of Debtor's needs and abilities. Apparently, Debtor has found such a situation at the Shirt Farm in Spencer, Iowa. Her employer is a friend from her church and is sympathetic to her situation. For a while, Debtor was living in her parents' home. Currently, she is living in an apartment run by the Sunshine Group, an organization that supervises mentally ill and mentally handicapped individuals.

The Department of Education loaned Debtor a total of $22,560.00 in 1998 and 1999. Debtor listed this amount on her complaint and seeks a discharge of this obligation. The Department of Education received $1,568.26 in payments from Debtor.

The court finds no error in the Bankruptcy Court's exhaustive factual finding. The Department of Education encourages this court to adopt the Sixth Circuit's standard of review announced in *In re Chessman*, 25 F.3d 356, 359 (6th Cir. 1994). The court declines the Department's invitation and follows the standard of review embraced in the Eight Circuit: "A bankruptcy court's determination of whether excepting a student loan from discharge will impose undue hardship is a factual

determination and is reversible only for clear error." *Long v. Educational Credit Management Corp.* (*In re Long*), No. 01-6042MN, ___ B.R. ____ (B.A.P. 8th Cir. 2001).

ANALYSIS

Student loans may be discharged for undue hardship. 11 U.S.C. § 523(a)(8). The debtor bears the burden of proof by a preponderance of the evidence to prove an undue hardship. *In re Ford*, 269 B.R. at 675. The test employed in the Eighth Circuit is a "totality of the circumstances" test.

Under this test, the court should examine the debtor's position in terms of: 1) the debtor's past, current and reasonably reliable future financial resources; 2) the debtor's and his or her dependents' reasonable necessary living expenses; and 3) any other relevant facts and circumstances in the particular bankruptcy case. *Andrews v. South Dakota Student Loan Assistance Corp.* (*In re Andrews*), 661 F.2d 702, 704 (8th Cir. 1981); *Andresen v. Nebraska Student Loan Program* (*In re Andresen*), 232 B.R. 127, 139 (B.A.P. 8th Cir. 1999) ("We interpret *Andrews* to require a totality of the circumstances inquiry with special attention to the debtor's current and future financial resources, the debtor's necessary reasonable living expenses . . . , and any other circumstances unique to the particular bankruptcy case."); *In re Ford*, 269 B.R. at 675 ("In *In re Andresen*, . . . we adopted the 'totality

of the circumstances test enunciated by the Eighth Circuit Court of Appeals in *Andrews v. South Dakota Student Loan Assistance Corp.* . . . ."). "While defining undue hardship is a question of law, . . . the determination of whether excepting a student loan from discharge will result in undue hardship for the debtor and the debtor's dependents is a question of fact." *In re Andresen*, 232 B.R. at 128 n.2.

In the case at bar, the totality of the circumstances support the Bankruptcy Court's conclusion that repayment of Debtor's student loans would create an undue hardship on Debtor. The Department of Education argues the court must address each loan individually because the Debtor has not consolidated her loans. There is support for such a position. *See In re Andresen*, 232 B.R. at 137 ("We hold that the bankruptcy court's application of § 523(a)(8) to each of [debtor's] education loans separately was not only allowed, it was required."). However, in terms of the total student debt and restructuring, the outcome is less certain: "While it appears plain to [the court] that there is no authority in the Code or elsewhere for partial discharge or other revision of a debtor's individual educational loan obligations, that question is not before [the court] and [the court] therefore decline[s] to decide it." *Id.* The Bankruptcy Court did not make a separate determination on each loan, but rather discharged all of Debtor's student loans. The Bankruptcy Court's failure to make such a determination does not change this court's determination that the debt is

dischargeable under the undue hardship provision of the Bankruptcy Code. "The court's authority under § 523 is to determine dischargeability. This is an all-or-nothing proposition. . . . The language of 11 U.S.C. § 523(a)(8) does not authorize the court to fashion a repayment schedule." *Hawkins v. Buena Vista Coll.* (*In re Hawkins*), 187 B.R. 294, 300 (Bankr. N.D. Iowa 1995). Debtor's condition and prospects for improvement are not encouraging. Debtor still faces significant hurdles as chronicled by the Bankruptcy Court. This court finds no error in the Bankruptcy Court's conclusion that "[a]ny reduction in her disposable income would drop her below poverty levels. Taking into account the size of the debt, even minimal payments would be stretched out for many years. Allowing such a result would just exacerbate Debtor's already precarious situation." Turning to the Eighth Circuit's test for dischargeability, the court will now examine Debtor's situation in light of the totality of the circumstances.

1. Debtor's past, current and reasonably reliable future financial resources.

The Bankruptcy Court found that

> Debtor is virtually devoid of any marketable job skills and it is highly unlikely that her prospects for a higher paying job will improve anytime in the future. It is reasonable to conclude that she will never be able to work more than part-time due to her illness and will always require

> Social Security assistance. Furthermore, there is no showing that she is likely to receive any financial windfall in the future.

In light of Debtor's illness, the severity of it, and the impact it has on her lifestyle, the Bankruptcy Court's determination of Debtor's financial prospects finds ample support in the record and lacks any indication of clear error. The court agrees with the conclusion below that the "Debtor has demonstrated that her condition is severely debilitating. . . . Debtor does not face mere financial difficulty; rather, her disorder prevents her from entering the workforce with any marketable skills or abilities."

In making this determination, it is true the court will inevitably engage in some speculation. "[T]he Eighth Circuit has recognized that 'the bankruptcy court's determination of undue hardship will necessarily involve a certain amount of speculation about the debtor's financial circumstances.'" *In re Ford*, 269 B.R. at 675 (quoting *In re Andrews*, 661 F.2d at 704-05). However, the Department of Education's speculation that Debtor can earn up to $700.00 on top of her Social Security income is not supported by the evidence. The Bankruptcy Court found substantial evidence indicating Debtor's ability to earn a living is seriously compromised by her illness. It is not only appropriate, but necessary to take Debtor's condition into consideration when evaluating her financial prospects: "The Eighth Circuit Court of Appeals has observed that it is appropriate to consider a

debtor's disease or disability as a factor in the determination of undue hardship because such a situation often requires expensive treatment and may effect an individual's ability to work." *In re Ford*, 269 B.R. at 675 (citation omitted). Any economic utility derived from the loans is also compromised by Debtor's condition: "While the debtor may have received some benefit from the loan in the past and may receive some benefit in the future, any benefit is outweighed by the severe difficulty of her medical condition which will, by all accounts, in the long-term, deprive her of the means to employ the educational benefit." *In re Plotkin*, 164 B.R. 623, 625 (Bankr. W.D. Ark. 1994). In the Bankruptcy Court's findings, Debtor's employment and education experience, and the effects of her illness, dispelled the belief that Debtor's financial prospects would improve. The court finds no clear error in that conclusion.

2. Debtor's reasonable necessary living expenses.

Debtor lists expenses of $1,172.00. Debtor's expenses increased after filing her bankruptcy petition because she moved out of her parents' home into the apartment supervised by the Sunshine Group. The Department of Education contests Debtor's expenditures on her automobile ($282.00), charity ($100.00), clothing ($75.00), furniture ($100.00), cable ($20.00), and recreation ($30.00). The

Department of Education suggests that Debtor's listed expenses are unreasonable and Debtor is indulging in luxuries at the expense of her creditors. The Department of Education further contends the Bankruptcy Court's finding of fact was clearly erroneous because some of Debtor's expenses would dissipate as she continued to make payments, e.g., her furniture. The court agrees with the Bankruptcy Court's determination that Debtor's listed expenses are reasonable[3]. "[G]oing over [debtor's] expenses dollar for dollar in order to find every possible way to boost a surplus is not reasonable given that the overall total remains firmly minimal." *In re Cline*, 248 B.R. at 351.

Significant in the Bankruptcy Court's conclusion to discharge Debtor's student loans is the impact of the illness on Debtor's ability to work. Debtor has found stable employment from an employer, also a fellow church member, who understands and is able to accommodate the effects of the illness. Debtor met this employer through her church to which she tithes $100.00 per month, an amount the Department of Education challenges as unreasonable. The Bankruptcy Court further concluded that "[b]ut for this contact, Debtor could be in a worse financial position." The Bankruptcy

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[3]The Department of Education's argument that certain expenses listed by Debtor are extravagant and unnecessary does not persuade this court. Debtor lives modestly in apartments supervised by the Sunshine Group. Her expenses, in light of the totality of the circumstances, are prudent. Reviewing Debtor's expenses as a whole, the court cannot say the Bankruptcy Court clearly erred in not finding her expenses unreasonable. *See In re Long*, No. 01-6042MN, ___ B.R. at ___.

Court concluded "that Debtor is a deeply religious person and such a contribution is reasonable under the circumstances. As to the remaining disputed expenses, the Court finds that Debtor's listed living expenses are necessary and reasonable." This court does not find error in the Bankruptcy Court's determination.

3. Other relevant facts and circumstances in Debtor's case.

This court agrees with the Bankruptcy Court's assessment of the impact of Debtor's illness. While the illness was discussed above in the context of its impact on Debtor's financial prospects and relation to reasonable living expenses, the court believes it is appropriate to consider Debtor's illness in this component of the totality of the circumstances test. *See In re Andrews*, 661 F.2d 702, 704-05 (8th Cir. 1981) ("Further, in our opinion the bankruptcy court properly considered the debtor's disease as a factor in the determination of undue hardship."). The physical and financial implications of a serious illness are well documented in case authority:

> Serious illness all too often requires expensive treatment and medication. Serious illness may affect an individual's ability to work. To some extent, as argued by the creditor, the expenses associated with a serous illness may be covered by health insurance. . . . The bankruptcy court should also consider any additional information about the debtor's present employment status and employment prospects . . . .

In re Andrews, 661 F.2d at 705.

> Finally, the court must evaluate the record as a whole to determine whether Debtor has carried the burden of proving that undue hardship exists. *Andresen*, 232 B.R. at 140. Present inability to repay the loan

> may not suffice as a hardship. *Roberson*, 999 F.2d 1132, 1135 (7th Cir. 1993). Instead, there must be a 'certainty of hopelessness' that the loans will be repaid. 'Undue hardship requires the debtor to show that the debtor is suffering from truly severe, even uniquely difficult circumstances, not merely severe financial difficulty.' *In re Ogren*, No. 9501211KC slip op. at 6 (Bankr. N.D. Iowa Oct. 10, 1996). Ultimately, the Court must make its judgment in light of the strong legislative policy against allowing the discharge of student loans in bankruptcy.' *Id.*

In re Scholl, 259 B.R. 345, 348 (Bankr. N.D. Iowa 2001). The Bankruptcy Court concluded that Debtor's condition is severely debilitating and has a profound effect on her ability to work. *See In re Cline*, 248 B.R. at 351 ("The court did not let [debtor] win an undue hardship discharge because she voluntarily limited her earning capacity. Instead, the court found that the [debtor] was *unable* to maintain a job that paid a higher income.") (emphasis in original). In addition, the Bankruptcy Court concluded that Debtor acted with the requisite amount of good faith, attributing "Debtor's poor judgment in acquiring the most recent loans" to the severity of Debtor's illness. This court finds support for that conclusion in the record. The discharge of Debtor's student loans was warranted under the Eighth Circuit's totality of the circumstances pronouncement.

CONCLUSION

After a thorough review of the record and the Bankruptcy Court's findings of fact and conclusions of law, and considering the Department of Education's arguments, this court concludes the Bankruptcy Court's decision is well supported by

the evidence and applicable law. Accordingly, the Bankruptcy Court's judgment to discharge the debt is affirmed.

ORDER

For the foregoing reasons, the decision of the bankruptcy court is AFFIRMED.

Done and so ordered this 22nd day of January, 2001.

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Michael J. Melloy,
United States District Judge for the
Northern District of Iowa